

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

MARY HORSMON and FRED HORSMON, )

Plaintiffs, )

v. )

Case No. 11-cv-01050-CB

ZIMMER HOLDINGS, INC., ZIMMER, INC., )

ZIMMER US, INC., )

Defendants. )

**DEFENDANTS' PARTIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Pursuant to Fed. R. Civ. Pro. 12(b)(6), the defendants, Zimmer Holdings, Inc., Zimmer, Inc., and Zimmer US, Inc. (collectively "Zimmer"), respectfully move the Court to dismiss with prejudice Counts II, III and IV of the Complaint In Civil Case ("Complaint") filed by the plaintiffs, Mary and Fred Horsmon ("Plaintiffs"). For the reasons more fully explained in the accompanying Memorandum Of Law In Support Of Defendants' Partial Motion To Dismiss Plaintiffs' Complaint, Counts II, III and IV fail to state claims upon which relief can be granted, and therefore should be dismissed.

WHEREFORE, the defendants, Zimmer Holdings, Inc., Zimmer, Inc., and Zimmer US, Inc., respectfully request that the Court dismiss Counts II, III and IV of Plaintiffs' Complaint, and for all other relief proper in the premises.

Respectfully submitted,

BAKER & DANIELS LLP

/s/ Jessica Benson Cox

Adrienne Franco Busby (Ind. Bar #22964-49A)

(admitted pro hac vice)

Jessica Benson Cox (Ind. Bar #26259-49)

(admitted pro hac vice)

300 North Meridian Street, Suite 2700

Indianapolis, IN 46204

adrienne.busby@bakerd.com

jessica.benson@bakerd.com

317.237.0300 telephone

317.237.1000 facsimile

Elizabeth Stroyd Windsor (PA No. 92010)

Morgan Lewis & Bockius LLP

One Oxford Centre, Suite 3200

Pittsburgh, PA 15219

ewindsor@morganlewis.com

412.560.3362 telephone

John P. Lavelle, Jr. (PA No. 54279)

Morgan Lewis & Bockius LLP

1701 Market Street

Philadelphia, PA 19103-2921

jlavelle@morganlewis.com

215.963.5001 telephone

*Counsel for the defendants, Zimmer Holdings, Inc.,  
Zimmer, Inc., and Zimmer US, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on September 9, 2011, a copy of the foregoing Defendants' Partial Motion To Dismiss Plaintiffs' Complaint was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Alan H. Perer  
Diane W. Perer  
Swensen, Peter & Kontos  
One Oxford Centre, Suite 2501  
Pittsburgh, PA 15219

/s/ Jessica Benson Cox